IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2240 of 2002
Date of decision: July 14, 2011.

Teja Singh

... **Appellant(s)**

v.

Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors.

... **Respondent(s)**

CORAM: **HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA**

Present: Shri Vinod Gupta, Advocate, for the appellant(s).

Shri Mohnish Sharma, Advocate for
Shri Narender Hooda, Advocate, for the respondents.

Kanwaljit Singh Ahluwalia, J. (Oral):

Plaintiff-appellant had instituted a suit for declaration to the effect that the demand raised by the defendant – respondent No.1 Dakshin Haryana Bijli Vitran Nigam Ltd. (hereinafter called the Nigam) vide memo No.145 dated 7.3.2005 was without any authority and it was not in consonance with the rules prevailing at that time and also prayed for consequential relief of permanent injunction restraining the defendant from effecting recovery thereof.

It is not disputed that the civil court had decreed the suit of the appellant-plaintiff and had held that the demand of Rs.4.00 lacs raised by way of penalty by the Nigam is wrong, against law and facts, and had consequently set aside the recovery memo.

Aggrieved against the same, defendant had filed an appeal. The lower appellate court accepted the appeal and held that the trial court could not try the suit as jurisdiction of the civil court is barred under Section 126 of the Indian Electricity Act, 2003 (hereinafter called the Act).

Shri Mohnish Sharma, Counsel appearing for the respondent-defendant – Nigam has very fairly stated that in the present case penalty was imposed because it was a case of theft. He has also stated that where penalty is imposed because of theft, jurisdiction of the civil court is not barred under Section 126 of the Act.

In view of the very fair stand taken by the Counsel for the respondents, this Court is of the view that the lower appellate court should decide Civil Appeal No.77 of 2009 afresh by affording opportunity of hearing to the parties.

Accordingly judgment dated 5.5.2010 passed by the lower appellate court is set aside. The parties shall cause appearance before the lower appellate court on 1.8.2011. Since the civil court has the jurisdiction to try the suit, uninfluenced by the earlier observations made in the impugned judgment, the lower appellate court shall decide the appeal within three months from the date of appearance of the parties.

Disposed of.

[**Kanwaljit Singh Ahluwalia**]
Judge

July 14, 2011.
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